

Geo-blocking of audiovisual services

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- The proposed geo-blocking regulation
 - Geo-blocking of copyrighted content: The problem
 - Potential demand for online cross-border access to content
 - Possible risks
 - A more limited prohibition?
 - Concluding observations
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- Most of the material is based on our 2017 study for the IMCO Committee of the European Parliament: “Extending the scope of the geo-blocking prohibition: An economic assessment”.

The Commission's legislative proposal

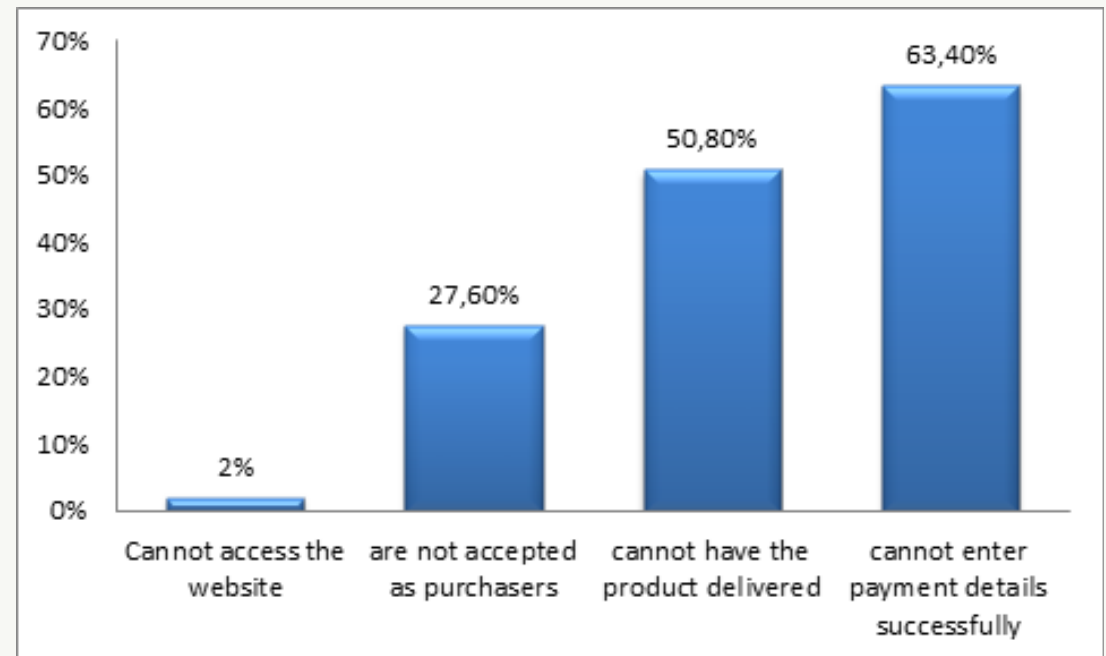
- The European Commission has introduced a legislative proposal to address “unjustified geo-blocking and other forms of discrimination based on customers' nationality, place of residence or place of establishment within the internal market”.
- Their overall proposal seeks to address concerns that relatively few consumers in the EU make e-commerce purchases cross-border within the EU, and that relatively few merchants sell cross-border.
- The Commission's legislative proposal avoids imposing restrictions on geo-blocking (i.e. “conditions of access”) of services that exist primarily to distribute copyrighted (audio-visual) content.

Geo-blocking of copyrighted content: The problem

Different forms of geo-blocking

- Geo-blocking comes into play in different ways and at different stages of the shopping process.
- In some cases, geo-blocking takes place immediately or automatically.
- In the majority of cases, consumers spend significant time and effort attempting to make a cross-border online purchase before realising that the seller or service provider will not sell to them or will not sell under the desired terms and conditions.

Cumulative failure rate (%) in a 2015 online cross-border mystery shopping survey



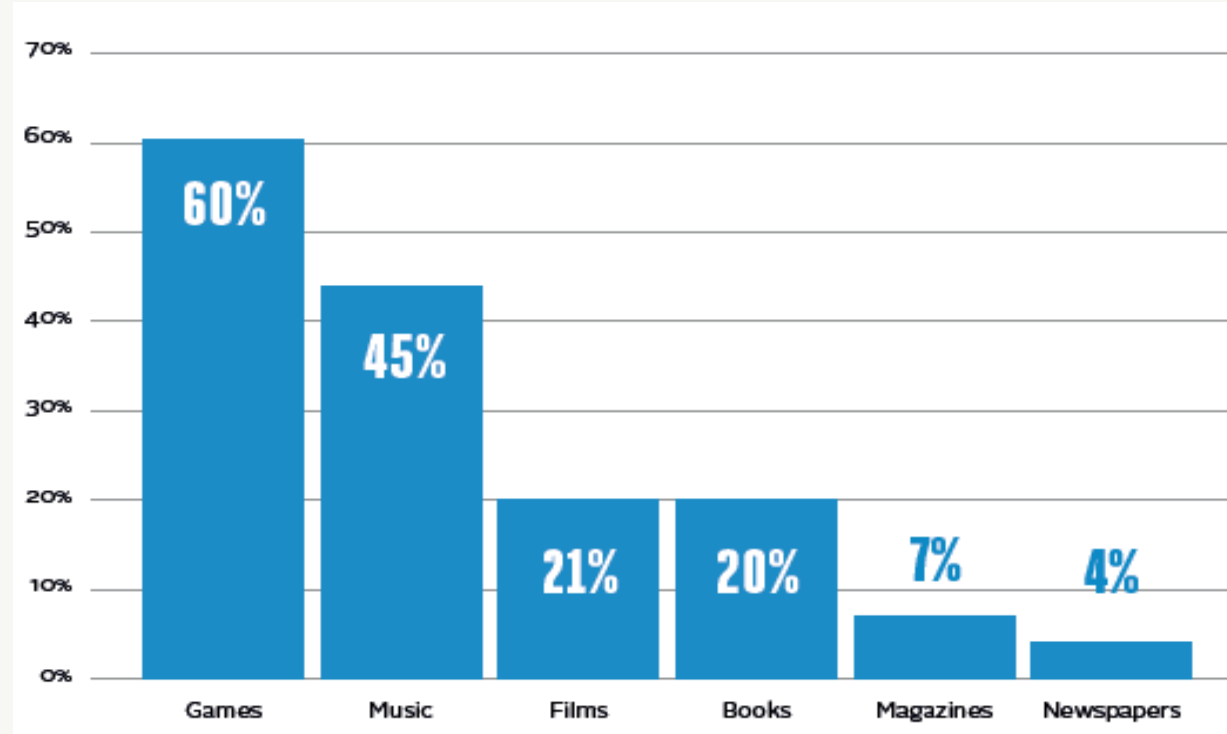
Source: GfK Mystery Shopping Survey and JRC/IPTS calculations (forthcoming), as quoted in the Commission's Impact Assessment report.

Geo-blocking and copyrighted content

- Demand for copyrighted digital content services is fast growing.
- The number of individuals who ordered content that was delivered or upgraded online grew by 45.5% between 2011 and 2014.
- 57% of the online rights licensed under all the licensing agreements submitted by content providers were granted for the territory of one Member State only.
- Geo-blocking is a common practise in the provision of copyrighted digital goods. 70% of digital content providers responded that they implement geo-blocking measures.
- Surveys indicate that one of the main reasons for which individuals demand cross-border access to digital content is the fact that the content is not available in their country of residence.

Copyrighted content is increasingly distributed in the form of services rather than goods

The degree to which copyrighted content is delivered digitally (revenue share, 2015).

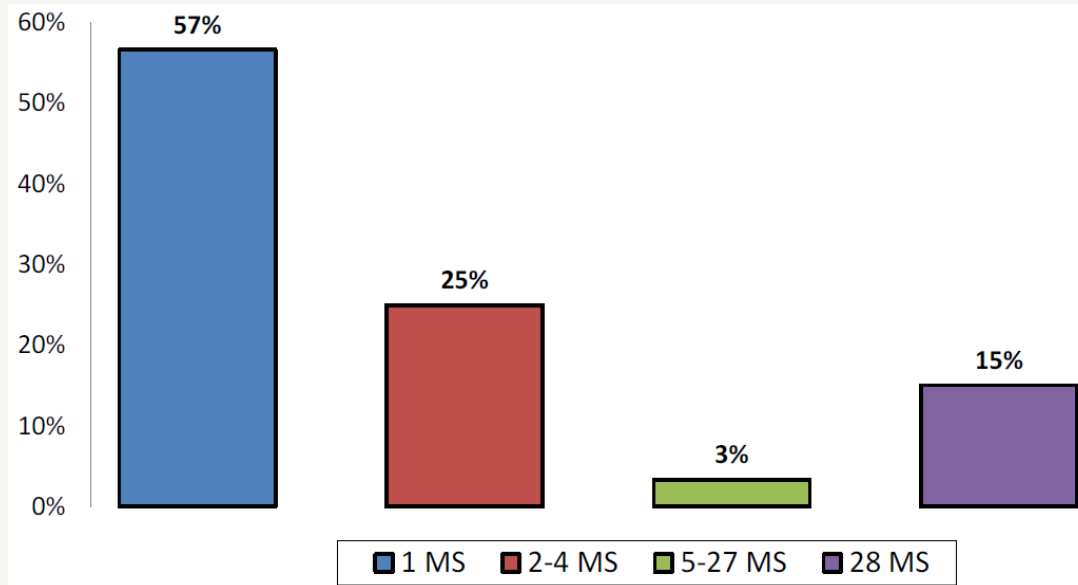


Source: IFPI (2016), 'Global Music Report 2016: State of the Industry'

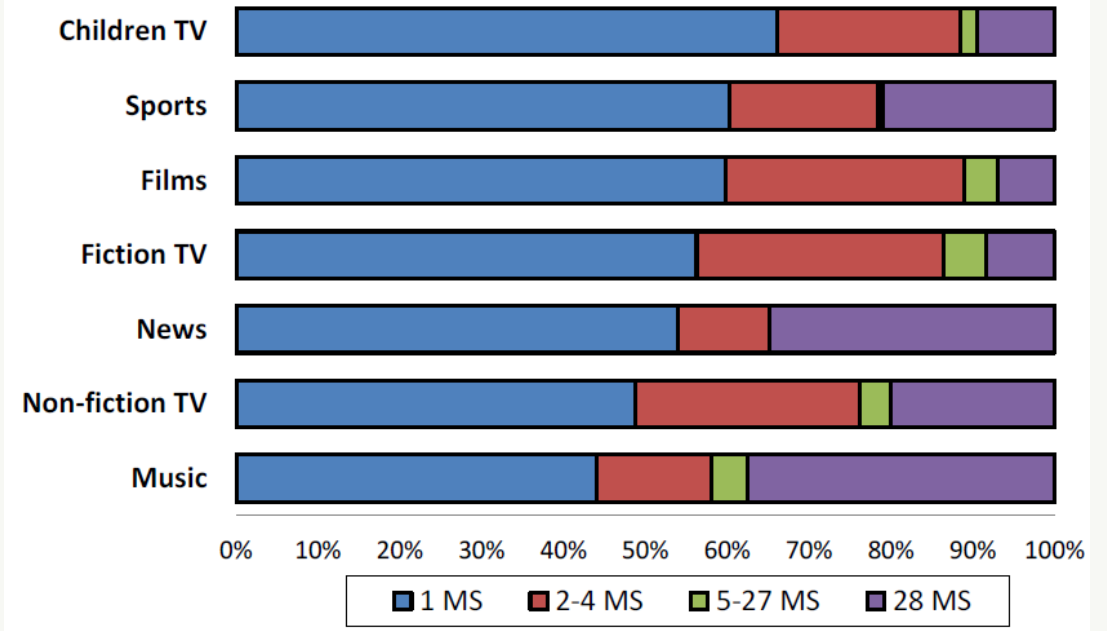
Geo-blocking In The Digital Single Market, Bruegel, 30 May 2017

Geo-blocking of digital content is common

Proportion of agreements including rights licensed for a certain territorial scope (all agreements submitted by digital content providers)



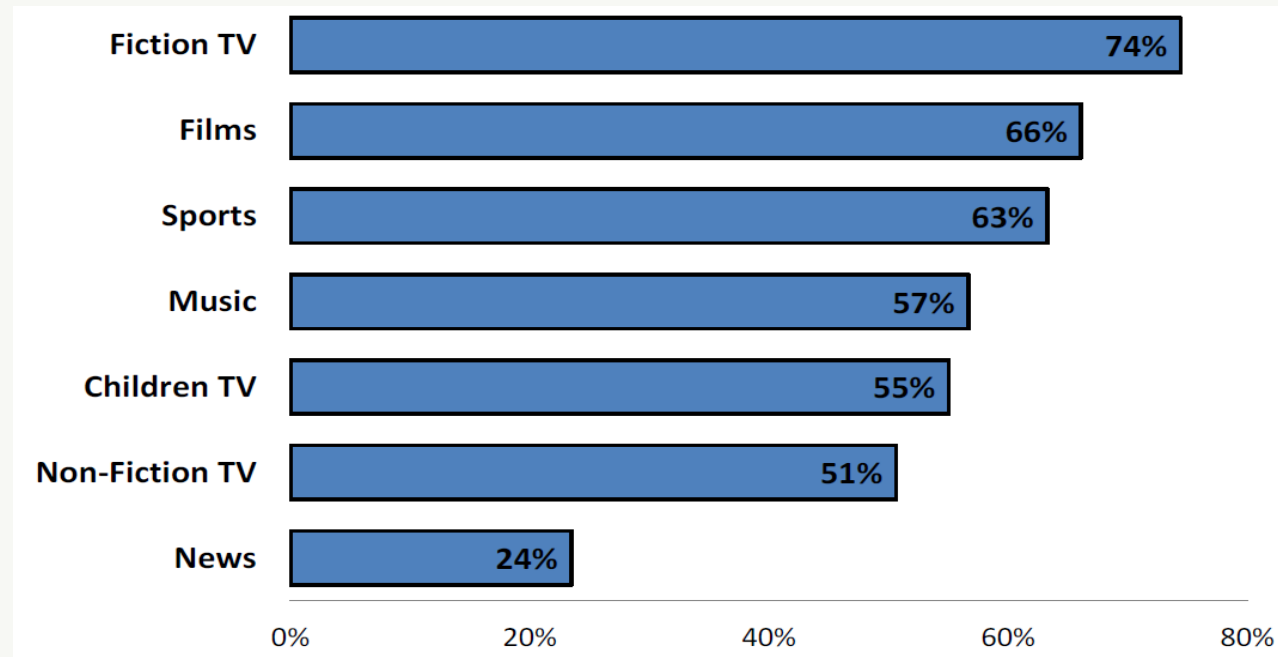
Proportion of agreements including rights for a certain territorial scope (responses by digital content providers)



Source: European Commission (2017), "Final Report on the E-commerce Sector Inquiry", SWD(2017) 229 final

Geo-blocking is often imposed through vertical agreements

Proportion of agreements requiring providers to geo-block by category
(average for all respondents in EU 28)



Source: European Commission (2017), "Final Report on the E-commerce Sector Inquiry", SWD(2017) 229 final

Commission concerns over vertical restrictions of copyrighted content

- The Commission sent a Statement of Objections in July 2015 setting out its preliminary view that certain clauses in film licensing contracts for pay-TV between Paramount (amongst other studios) and Sky UK breach EU antitrust rules:
 - required Sky UK to block access to Paramount's films through its online pay-TV services (so-called "geo-blocking") or through its satellite pay-TV services to consumers outside its licensed territory (UK and Ireland)
 - required Paramount to ensure that broadcasters outside the UK and Ireland are prevented from making their pay-TV services available in the UK and Ireland.

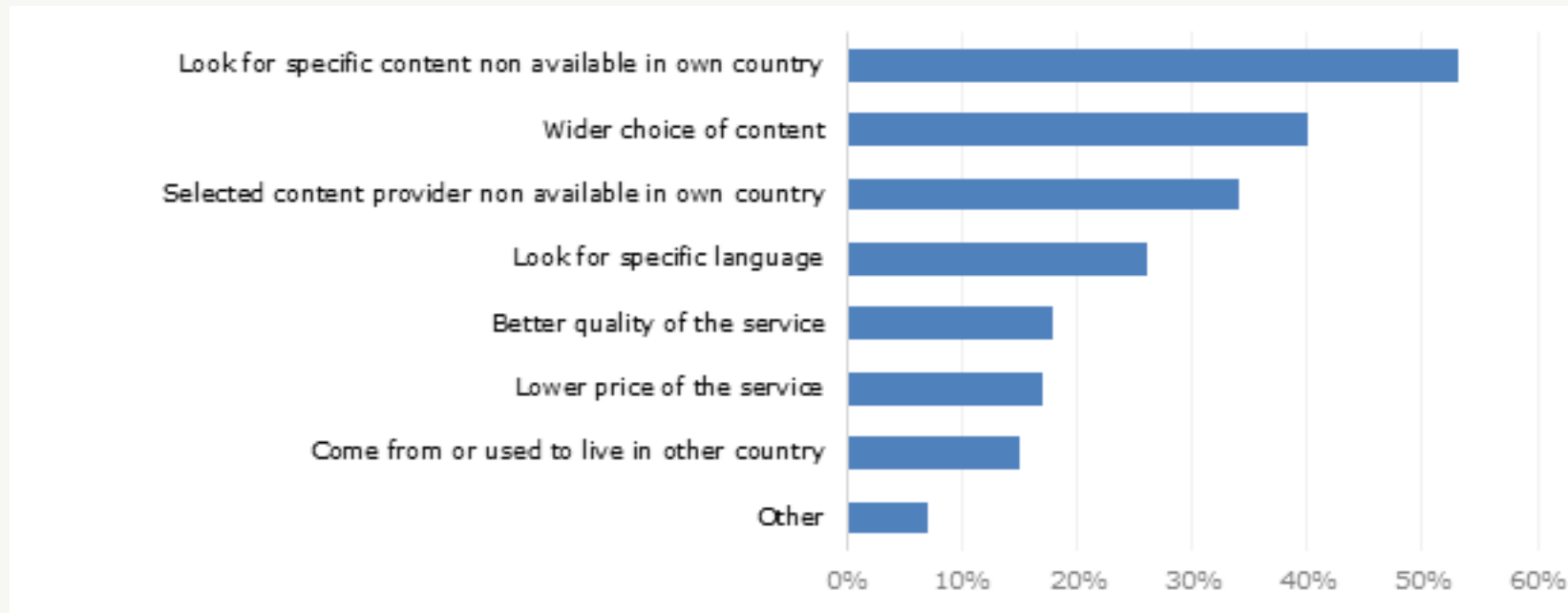
Commission concerns over vertical restrictions of copyrighted content

- The Commission was concerned that this restricts the ability of broadcasters to accept unsolicited requests (so-called “passive sales”) for their pay-TV services from consumers located outside their licensed territory, thus harming cross-border competition between pay-TV broadcasters.
- Paramount resolved the matter in July 2016 with undertakings that it will neither act upon nor enforce those clauses in existing film licensing contracts for pay-TV with any broadcaster in the EEA, nor will it re-introduce them in new contracts.

Potential demand for online cross-border access to content

Reasons why consumers want cross-border access to digital content

Main reasons for trying to access online content cross-border, EU28 (2015)



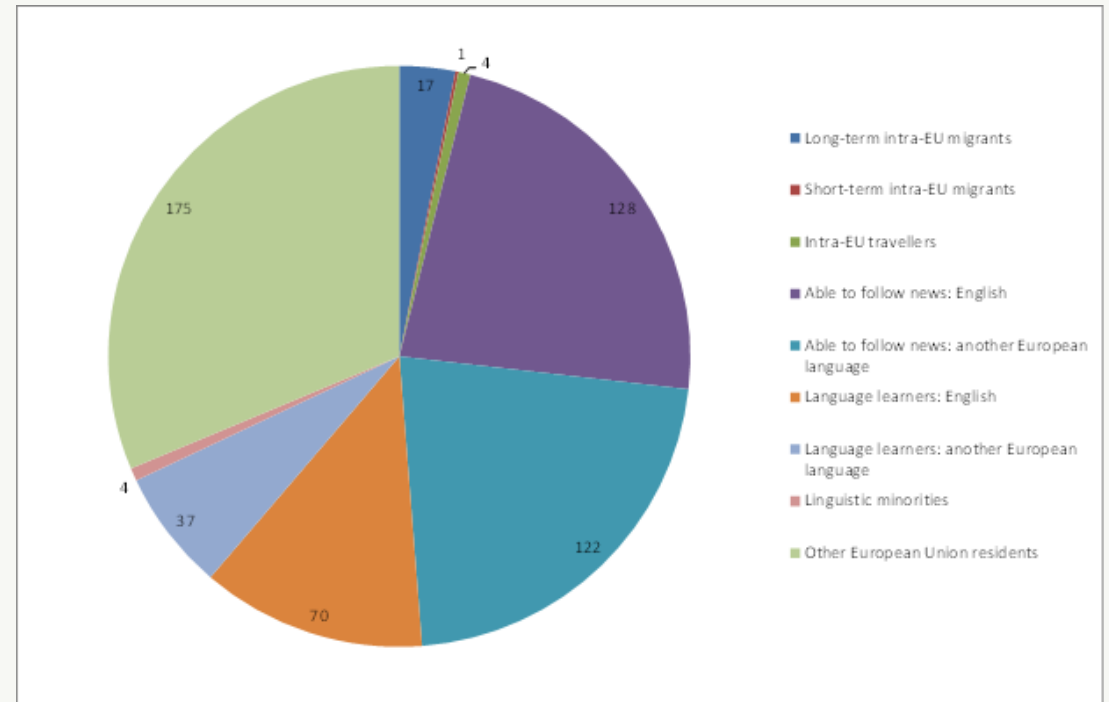
Source: Eurobarometer 411 (2015)

How much unsatisfied demand?

- We made crude estimates of maximum market potential:
 - Estimate the number of households of various sub-groups that might want to procure audiovisual services cross-border;
 - Estimate the distribution of the willingness to pay (WTP) of those who would wish to procure audiovisual services cross-border, establishing lower and upper bounds;
 - Multiply the number likely to acquire the service in each population category by their respective WTP to estimate total revenue; and
 - Correct to reflect that some are already receiving the service in some other way (for instance, by “grey market” legal satellite services) and to reflect the fact that the service may not be realistically available to all those who desire it.

Different groups may have different affinity for cross-border access

- Away from their country of origin
 - Long-term intra-EU migrants
 - Short-term intra-EU migrants
 - Intra-EU travellers
- Foreign language skills or interest
 - Language proficiency
 - Able to follow news: English
 - Able to follow news: another European language
- Language learners
 - Language learners: English
 - Language learners: another European language
 - Linguistic minorities
- Other European Union residents



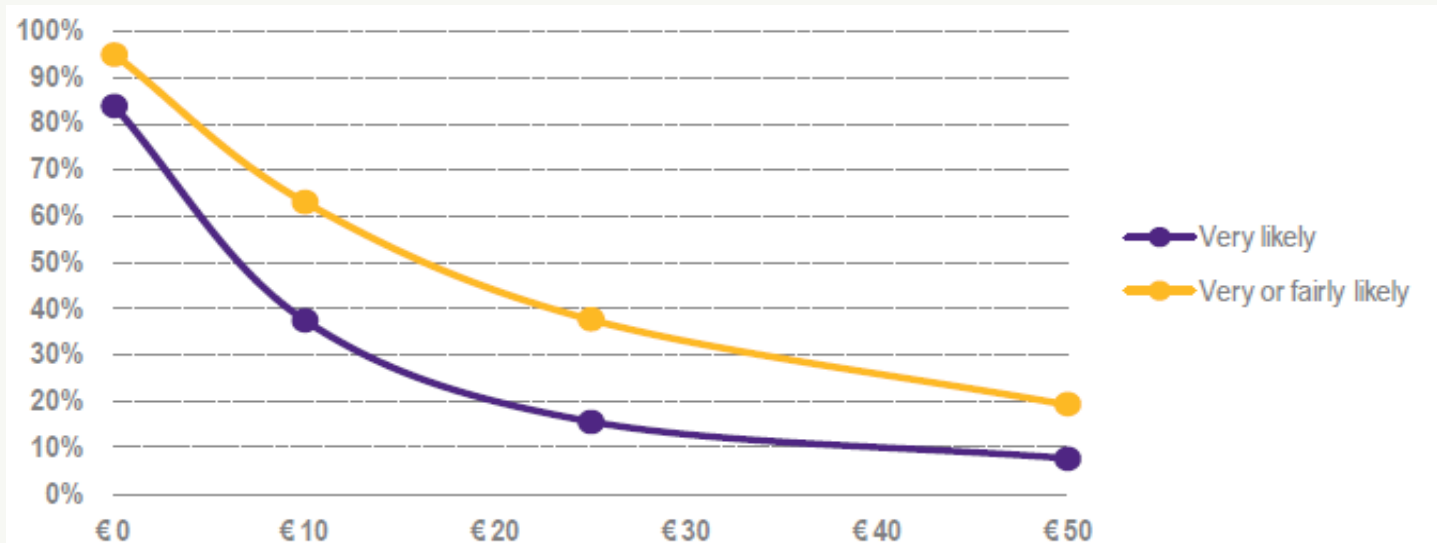
Source: Bruegel estimates, following the approach of Plum (2012)

Language plays an important role

- Among those who are not away from their country of origin, language skills play an important role; however, it is a complex role, and it varies among different digital media.
- Language is less critical for music, but more critical for e-books.
- For audiovisual media, works that are actively targeted toward a language group are typically adapted using one of three techniques: dubbing, voice-over, or sub-titling.
- For audiovisual works that are not translated, however, one needs to have a sufficient command of the language.

WTP among long-term intra-EU migrants

Willingness to pay a monthly subscription for channels and programmes from other EU countries (€).



Note: The price points for respondents in Poland, Sweden and the UK were expressed in the local currency. Owing to rounding of the converted values the equivalent Euro price points may differ slightly from those charted.

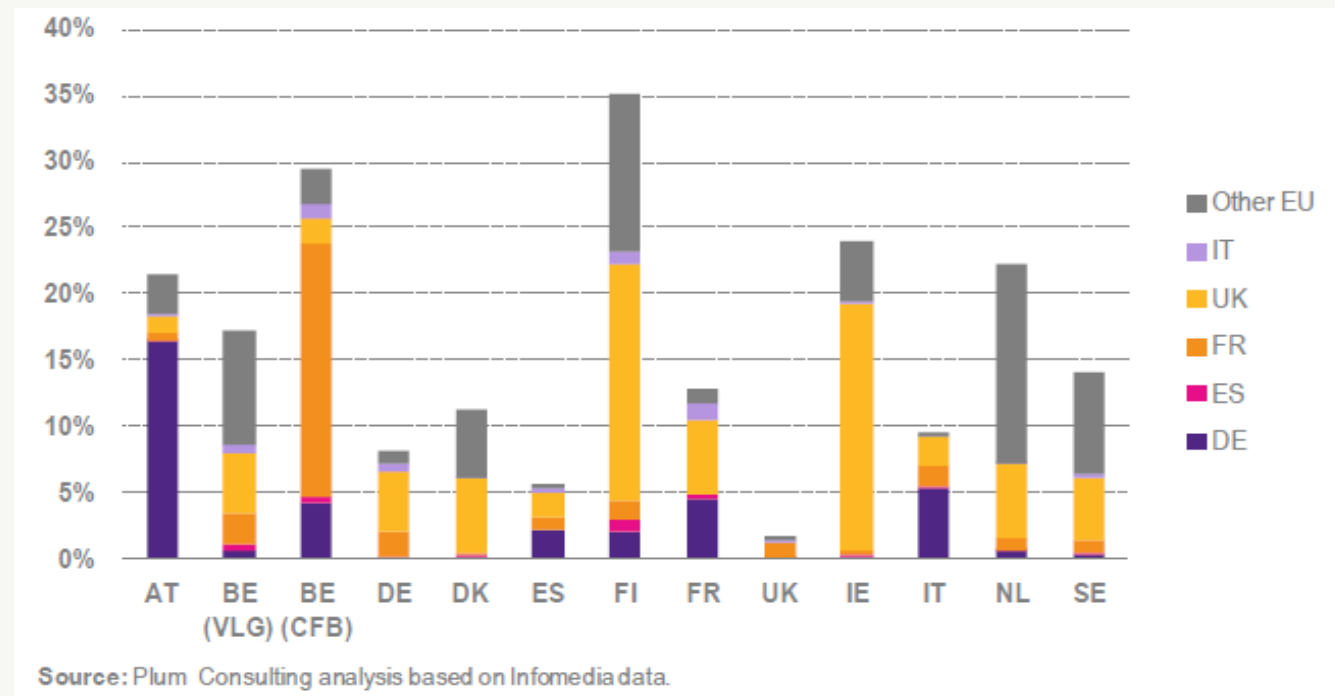
Base: 414 European migrants resident in France, Poland, Spain, Sweden and UK who have ever watched video from other countries or interested in doing so

Source: TNS online survey, September 2011

Source: Plum (2012), "The economic potential of cross-border pay-to-view and listen audiovisual media services"

Some of the demand is already met

Proportion of television hours that are non-national EU for a sample of channels (2012).



Source: Plum (2012), "The economic potential of cross-border pay-to-view and listen audiovisual media services"

Aggregate opportunity if geo-blocking were eliminated

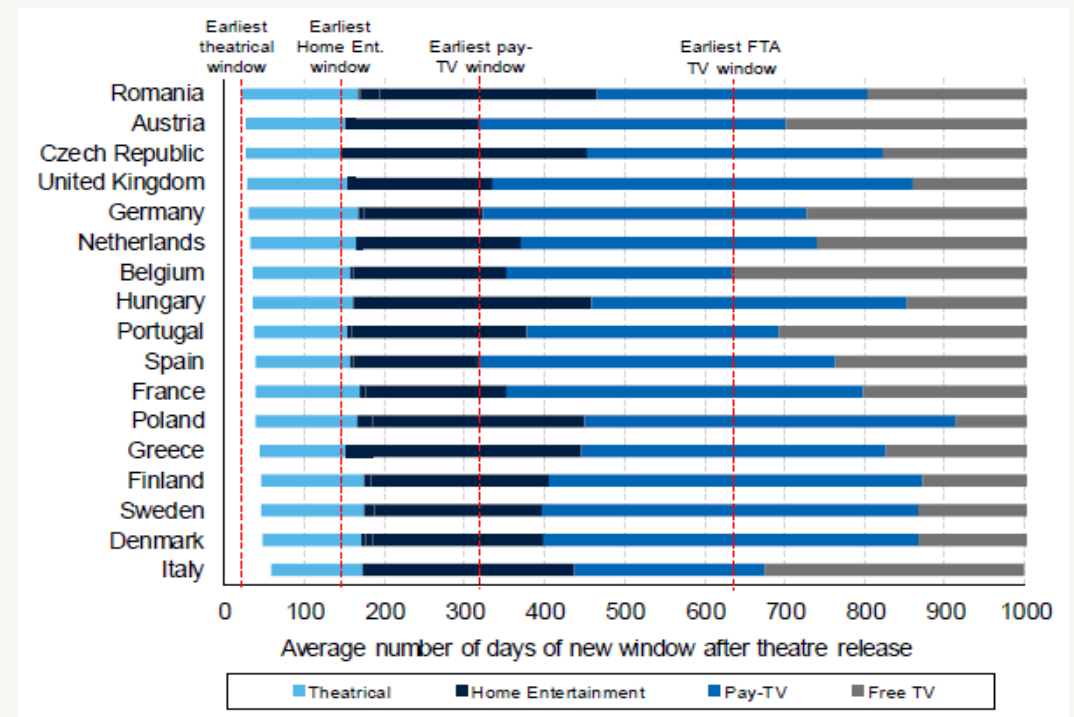
- Adding all of this together, we come up with an aggregate most likely EU-wide opportunity of € 378 million per annum.
 - We find a lower bound of € 189 million per annum.
 - We find an upper bound of € 945 million per annum.
- In each case, this represents a rough estimate of the incremental amount that consumers are willing to spend.
- The degree to which this can be realised in practice is uncertain.

Possible risks

Geo-blocking plays a key role in current industry arrangements

- The business model of the audio-visual industry is based on market partitioning in terms both of geography and time.
- The audio-visual industry cautions that ending geo-blocking would impact the financing model for producing audio-visual content.
- The claims need to be taken seriously.

Average time between windows (days)



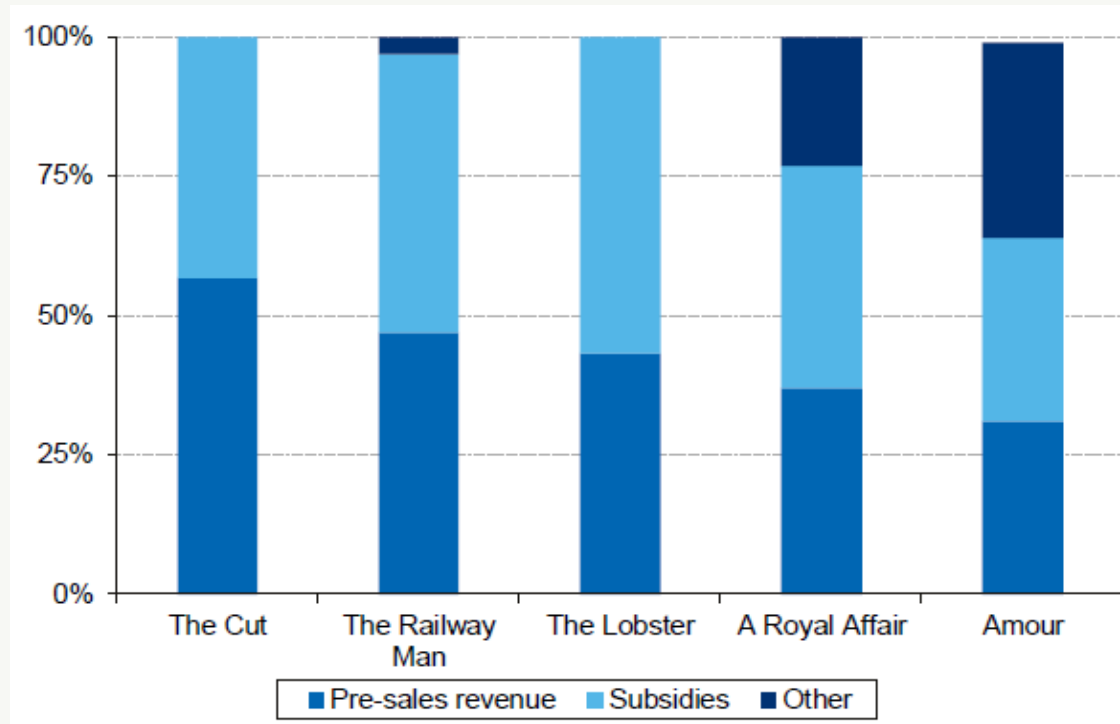
Oxera (2016), "The impact of cross-border access to audiovisual content on EU consumers".

Concerns raised by the industry

- Creation of audiovisual works is expensive.
- Profitability is unpredictable because audiovisual works are experience goods whose value is only known once they have been experienced.
- Pre-financing consequently plays a critical role in enabling audiovisual works to be produced.
- Territoriality and windowing are crucial in generating the predictable returns that are needed in order to obtain pre-financing.
- Changes that jeopardise the predictability of financial returns put pre-financing at risk, and in doing so also put the production of audiovisual works at risk.

Pre-sales revenue plays an important role in financing

Examples of recent independent film funding



Oxera (2016), “The impact of cross-border access to audiovisual content on EU consumers”.

Two research views

- The Single Market argument to prohibit geo-blocking is clear.
- Oxera will report the results of their study for the industry.
- A 2014 study by CRA for the Commission found in sum that “Critics of ... the territorial nature of copyright, often substantiate their position with the argument that it needlessly raises transaction costs associated with multi-territorial exploitation. ... Our analysis, however, suggests that this view may be a result of superficial reasoning. Policy changes to limit stakeholders’ ability to exploit online content on a territory-by-territory basis are likely to impact social welfare through various mechanisms, [and] are likely to produce opposing effects on social welfare ...”

Problems with production of European audio-visual content

- This does not necessarily mean that there is no chance to improve the EU model for financing the production of audio-visual works.
- Few European works get much circulation outside of their country (or language) of origin. Non-national European films account for only 12% of cinema admission market share.
- These challenges have not much to do with the volume of production, but rather with what is produced, and for what audience, and with how it is distributed.
- International distribution is a key part of Hollywood planning.

Problems with production of European audio-visual content

Region	2007	2008	2009	2010	2011	2012
U.S.	62.6%	65.6%	67.1%	68.0%	60.1%	61.1%
European films	28.1%	28.2%	26.7%	25.3%	28.5%	35.2%
Europe / U.S. inc14	7.5%	4.4%	4.2%	7.9%	9.7%	2%
Others	1.8%	1.8%	2.0%	1.3%	1.6%	1.6%

Source: European Commission (2013), Impact Assessment Report, communication on State Aid for Films and other Audiovisual Works

- The European audio-visual sector has historically had a prodigious output, having produced 1,142 feature films in 2008 compared to 520 in the USA.
- US films nonetheless consistently account for more than 60% of cinema admissions within the EU, twice as much as European films.
- US enterprises also account for the majority of fictional content on European television screens.

Problems with production of European audio-visual content

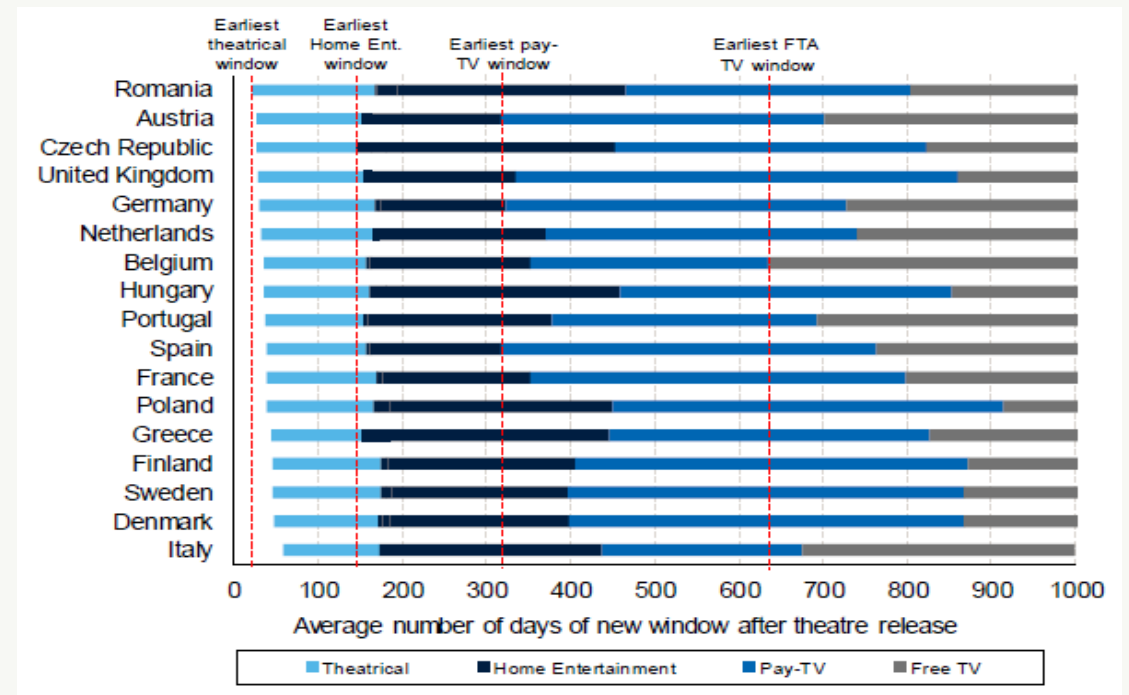
- One could argue in economic terms that *Europe is producing too many films*, without a sufficient business case for each.
- National subsidy programmes together with market partitioning might be said to contribute to overheated production.
- This is however a multi-dimensional issue.
 - Audio-visual works are not just commercial, but also an art form.
 - National content is linked to cultural diversity and pluralism.
- If one wanted to make changes, doing so through geo-blocking policy alone is a bad idea – it is too blunt an instrument.

A more limited prohibition?

A more limited prohibition?

- One could instead consider a selective and targeted prohibition on geo-blocking of audiovisual content.
- A geo-blocking prohibition that came into play only when works reach the FTA window would put at risk only a small percentage of revenues, and would have only minimal impact on the predictability of revenues.

Average time between windows (days)

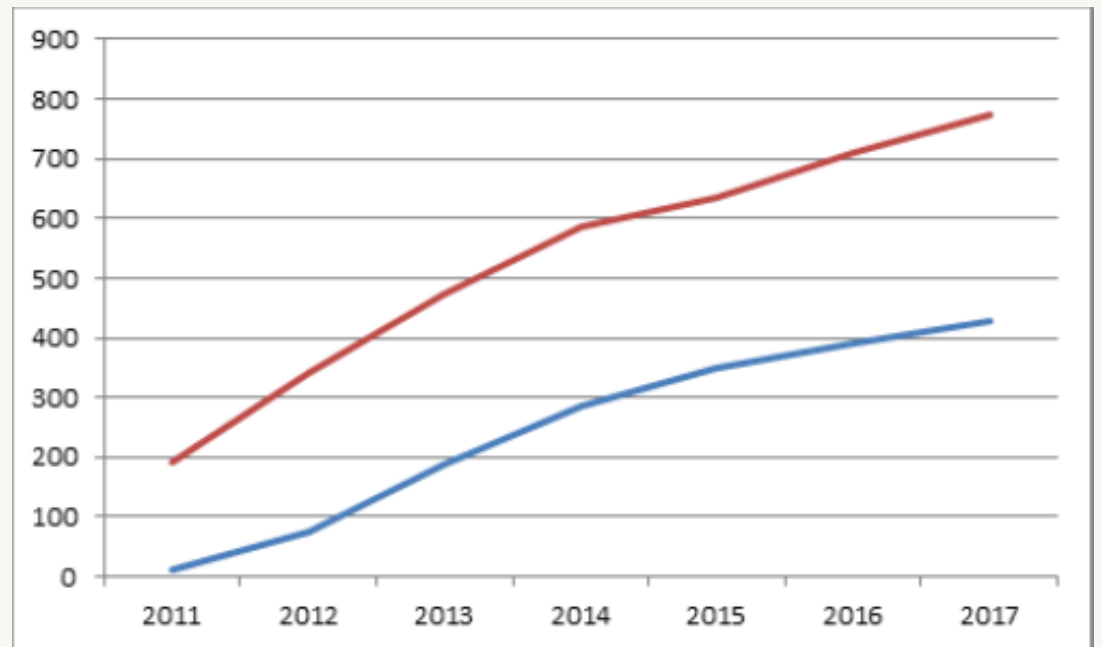


Oxera (2016), "The impact of cross-border access to audiovisual content on EU consumers".

A more limited prohibition?

- Most work to date has been about *Subscription Video on Demand (SVoD)*.
- A prohibition only on geo-blocking of *Transactional Video on Demand (TVoD)* might be less problematic.
- TVoD services are a growing part of the market.

Transactional (red line) and subscription (blue line) online film revenues for 24 EU Member States (2011-2017) (€ mn)



Source: Plum (2012), "The economic potential of cross-border pay-to-view and listen audiovisual media services".

Concluding observations

Concluding observations

- There are reasons to desire a prohibition on geo-blocking of audio-visual content.
- There is however risk of harming business models in the sector.
- Evolution of business models is arguably needed in any case, but would need to be undertaken in a comprehensive way.
- A targeted approach where a prohibition applies only to works that are sufficiently far from the date of first theatrical release, or only to TVoD services, might be substantially more promising than an overall geo-blocking prohibition.